STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH HEARING OFFICE

In re: P&T Asbestos Contractors

Petition No. 2001-0319-053-008
November 22, 2002

AMENDED MEMORANDUM OF DECISION

On October 31, 2002, the undersigned issued a Memorandum of Decision in the above-referenced matter. On November 5, 2002, the Department of Public Health ("the Department") filed a Motion to Clarify Memorandum of Decision ("the Motion"). On November 8, 2002, the undersigned issued an Order directing P&T Asbestos Contractors ("respondent") to reply to the Motion on or before November 15, 2002 ("the Order"). On November 12, 2002, respondent filed an Objection to the Request for Modification ("the Objection"). On November 14, 2002, the Department filed a Reply to the Objection ("the Reply").[1] The Motion having been considered, is hereby **GRANTED**.

Pursuant to *Conn. Gen. Stat.* §4-181a(c), the Memorandum of Decision issued in this matter (which is attached hereto and incorporated herein by reference as if fully set forth) is modified as follows:

1. Page 9, fourth line, delete "critical barriers" and insert in lieu thereof "HEPA filtration";

2. Page 10, fourth line from the bottom, delete "$4,000" and insert in lieu thereof "$4,500";

3. Page 11, 24th line, delete "$4,000" and insert in lieu thereof "$4,500"; and,

4. Page 12, fifth line, delete "$4,000" and insert in lieu thereof "$4,500."

By Order of:

D. H. L. 11-22-02

Donald H. Levenson, Esq.
Hearing Officer

Date

[1] The Motion, Order, Objection, and Reply are hereby entered into the record as Hearing Officer Exhibits ##11-14, respectively

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH HEARING OFFICE

In re: P&T Asbestos Contractors

Petition No. 2001-0319-053-008
October 31, 2002

MEMORANDUM OF DECISION

Procedural History

On December 18, 2001, the Department of Public Health ("the Department") issued a Statement of Charges ("the Charges") against P&T Asbestos Contractors ("respondent"), pursuant to *Conn. Gen. Stat.* §§19a-10 and 19a-14, seeking the revocation or imposition of other disciplinary action against respondent's asbestos contractor license #000107 ("the license"). H.O. Exh. 1.

On January 10, 2002, the Department issued a Notice of Hearing in which the Commissioner of the Department appointed this Hearing Officer to rule on all motions, determine findings of fact and conclusions of law, and issue an order. H.O. Exh. 2.

On January 25, 2002, respondent filed an Answer denying most of the factual allegations in the Charges. H.O. Exh. 3.

On February 22, 2002, the Department filed a Motion to Amend the Statement of Charges, which was granted on March 6, 2002. H.O. Exh. 6.

On March 19, 2002 and April 17, 2002, administrative hearings were held to adjudicate the Charges. The hearings were conducted in accordance with Chapter 54 of the Connecticut General Statutes (the Uniform Administrative Procedure Act) and §§19a-9-1, et seq. of the Regulations of Connecticut State Agencies ("the Regulations"). Attorney David Grossman represented respondent, and Attorney Linda Fazzina represented the Department at the hearing.

In its post-hearing brief filed on May 13, 2002, respondent requested that certain allegations in the Charges be dismissed. The Department objected to this request. In view of the decision reached below, respondent's request is denied. H.O. Exhs. 8, 10.[1]

[1] The respondent's post-hearing and reply briefs, and the Department post-hearing brief, are hereby entered into the record as H.O. Exhs. 8, 10 and 9, respectively.

This Memorandum of Decision is based entirely on the record and sets forth this Hearing Officer's findings of fact, conclusions of law, and order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H Computer Systems, Inc.*, 605 F. Supp. 816 (Md. Tenn. 1985).

Allegations

A. FIRST COUNT

1. In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos contractor license number 000107.

2. In paragraph 2 of the Charges, the Department alleges that in or about the summer of 2000, respondent performed an asbestos abatement project ("the project") at an industrial complex at 718 Old North Colony Road, Wallingford, Connecticut ("the property").

3. In paragraph 3 of the Charges, the Department alleges that on or about July 11, 2000, in connection with the project at the property, respondent violated the standards applicable to the performance of asbestos abatement, which standards are found at §§19a-332a-1 to 19a-332a-16, inclusive, of the Regulations, in that it:

   a. failed to utilize clean up procedures within a building known as Building #2 on the property, until no visible residue was observed in two work areas, in violation of §19a-332a-5(g) of the Regulations;

   b. failed to seal air-tight, with polyethylene sheeting, all openings between the work area in a building on the property known as Building #6, and the non-work area(s), in violation of §19a-332a-5(c) of the Regulations; and/or

   c. failed to provide negative pressure ventilation units with high efficiency particulate air ("HEPA") filtration in sufficient number to allow at least one air change every fifteen minutes in a work area in Building #6, in violation of §19a-332a-5(h) of the Regulations.

4. In paragraph 4 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to the *Conn. Gen. Stat.* §§20-440 and/or 19a-332a(b), taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(c), 19a-332a-5(g), 19a-332a-5(h), 20-440-1 and/or 20-440-6(b) of the Regulations.

B. SECOND COUNT

5. In paragraph 5 of the Charges, the Department incorporates Paragraphs 1 and 2 by reference.

6. In paragraph 6 of the Charges, the Department alleges that on or about July 12, 2000, in connection with the project within Building #6, respondent violated the Regulations, in that it:

   a. failed to utilize clean up procedures, until no visible residue was observed in the work area, in violation of §19a-332a-5(g) of the Regulations;

   b. failed to seal air-tight, with polyethylene sheeting, all openings between the work area and the non-work area(s), in violation of §19a-332a-5(c) of the Regulations; and/or

   c. failed to remove all moveable objects from the work area, failed to clean all moveable objects to be salvaged or reused, and/or failed to dispose of all moveable objects that could not be salvaged or reused as asbestos waste in violation of §19a-332a-5(d) of the Regulations.

7. In paragraph 7 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §§20-440 and/or 19a-332a(b), taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(c), 19a-332a-5(d), 19a-332a-5(g), 20-440-1 and/or 20-440-6(b) of the Regulations.

C. THIRD COUNT

8. In paragraph 8 of the Charges, the Department incorporates Paragraphs 1 and 2 by reference.

9. In paragraph 9 of the Charges, the Department alleges that on or about August 3, 2000, in connection with the project at the property, respondent failed to properly label all containers holding asbestos waste, in violation of §19a-332a-5(k) of the Regulations.

10. In paragraph 10 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §§20-440 and/or 19a-332a(b), taken in conjunction with §§19a-332a-1, 19a-332a-2, 19a-332a-5(k), 20-440-1 and/or 20-440-6(b) of the Regulations.

Findings of Fact

1. Respondent holds Connecticut asbestos contractor license number 000107. H.O. Exh. 3 (the Answer).

2. In the summer of 2000, respondent conducted an asbestos abatement project at Building ##2 and 6 at the property. H.O. Exh. 3.

3. At some time prior to July 6, 2000, respondent completed its asbestos abatement of Building #6 and those portions of Building #2 at issue in the Charges. Dept. Exh. 1, pp. 2-3; Rsp. Exhs. A, B; Tr. I, p. 41.[2]

[2] As used herein, "Tr. I." and "Tr. II." refer to the transcripts of March 19 and April 17, 2002, respectively.

4. On or about July 5, 2000, the Project Monitor[3] for the project performed visual inspections of Building ## 2 and 6, and took air samples for Building #2. On that date, both buildings passed their visual inspections, and Building #2's air samples came back within acceptable levels. Rsp. Exhs. A, B.

5. On July 11, 2000, visible residue was present on pipes, and horizontal and floor surfaces, within the project work area at Building #2. Dept. Exh. 1, p. 2, and Att. C.

6. All of the eight samples of materials taken by the Department's investigator from the work area in Building #2 on July 11, 2000, tested positive for the presence of asbestos.[4] Dept. Exh. 1, p.3, and Att. D; Tr. I, p. 57.

7. On July 11, 12 and 19, 2000, the following conditions existed in Building #6: (1) critical barriers were missing on some of the windows; (2) a hole in the roof was not covered with polyethylene sheeting; (3) visible residue was present on various pipes, equipment, and horizontal surfaces throughout the building; (4) 30 linear feet of pipe was covered with piping insulation; (5) a table, tools, drums, and other movable objects were present; (6) potential asbestos containing material ("ACM") surrounded a boiler; and, (7) no HEPA fans were operating. Dept. Exh. 1, pp. 4-5, Att. G; H.O. Exh. 3; Tr. I, pp. 64, 69, 70, 93-94; Tr. II, pp. 77, 78.

8. All of the three samples of materials taken by the Department's investigator from Building #6 on July 19, 2000, tested positive for the presence of asbestos.[5] Dept. Exh. 1, p.4, Att. F; Tr. I, p. 71.

9. At some time between July 27, 2000 and August 3, 2000, Building #6 was demolished as previously planned. Dept. Exh. 1, p. 6, Att I-1; Tr. I, p. 98.

10. Respondent was requested to notify the Department before Building #6 was demolished, but failed to do so. Dept. Exh. 1, p.6; Tr. I, p. 92.

11. On August 3, 2000, a trailer outside of Building #2 was loaded approximately 75% full with bags of ACM. Several[6] of those bags were missing labels identifying the generator of the ACM and the destination to which the bags were being transported. Dept. Exh. 1, p. 8; Tr. I, p. 100.

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[3] A "project monitor" is a licensed asbestos consultant who is hired by an asbestos abatement contractor to oversee an asbestos abatement project. The project monitor is paid by, but is not an employee of, the asbestos abatement contractor. *See*, §§20-440-1(29) and 20-440-3(b)(40; Tr. I, p. 210; Tr. II, p.31.

[4] Although respondent questions the manner in which the Department handled the samples, it does not seriously contest the accuracy of the sample test results. H.O. Exh. 8.

[5] *See*, f.n. 4.

[6] The Department's investigator testified that he examined approximately 15 to 20 bags of ACM, none of which were appropriately labeled. Tr. I. p. 152. Respondent admitted that at least fifty of the bags in the trailer were unlabelled. Tr. II, p. 83.

12. Respondent was requested to notify the Department after it had labeled the bags of ACM referred to in paragraph 11, above, so they could be re-inspected, but failed to do so.[7] Dept. Exh. 1, p. 8.

13. Exposure to asbestos fibers is a significant threat to human health and there is no "safe" level of asbestos exposure. The higher the concentration of asbestos fibers to which an individual is exposed, the greater the risk to their health. Tr. I. pp. 210, 214.

14. The ACM present in Building ##2 and 6 after their visual inspections on July 5, 2000, posed a threat to anyone who may have come in contact with those materials.[8] Tr. I, pp. 67, 98, 99, 217.

15. At the request of the Department, respondent re-cleaned Building ##2 and 6 and had them re-inspected by a different project monitor. Building #2 successfully passed its visual re-inspection and second air sampling on July 23, 2000. Building #6 successfully passed its visual re-inspection on July 26, 2000. Dept. Exh. 1, pp. 3, 7; Tr. I, pp. 91, 202, Tr. II, pp. 115, 116.

Discussion and Conclusions of Law

Section 19a-332a-2 of the Regulations prohibits any person from engaging in asbestos abatement unless it is in compliance with §§19a-332a-3 to 19a-332a-12 of the Regulations. Those regulations require an asbestos contractor, *inter alia*, to: (1) isolate the work area from non-work areas and seal all openings between the work area and non-work areas, including all windows, with polyethylene sheeting; (2) clean and remove all movable objects from the work area; (3) clean the work area until no visible residue is observed; (4) maintain a sufficient number of HEPA fans to replace the air in the work area every 15 minutes; and, (5) properly label all leak tight containers. *See,* §§19a-332a-5(c), 19a-332a-5(d), 19a-332a-5(g), 19a-332a-5(h), and 19a-332a-5(k), of the Regulations, respectively. Pursuant to §20-440-6(b) of the Regulations, the Department may take any action authorized by *Conn. Gen. Stat.* §19a-17 against an asbestos contractor who violates any regulation governing asbestos abatement or licensure.

The Department bears the burden of proof by a preponderance of the evidence in establishing a violation of any of the regulatory provisions cited above. *Swiller v. Comm'r. of Public Health*, CV-950705601, (Superior Court, J.D. Hartford/New Britain at Hartford, October

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[7] Respondent's contention that it attempted to contact the Department prior to transporting the ACM bags offsite, but was unable to reach anyone at the Department is not credible. *See*, Tr. II, p. 113.

[8] The ACM in Building ## 2 and 6 posed a particular threat to employees of other contractors who might have unwittingly come into contact with those materials in connection with construction or salvaging operations conducted in those buildings after the date of the visual inspections. Tr. I, pp. 67, 98-99, 217.

10, 1995); *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, reh'g den., 451 U.S. 933 (1981); *Bender v. Clark*, 744 F. 2d 1424 (10th Cir. 1984); *Sea Island Broadcasting Corp. v. F.C.C.*, 627 F. 2d 240, 243 (D.C. Cir. 1980); all as cited in *Bridgeport Ambulance Service, Inc., v. Connecticut Dept. of Health Services*, No. CV 88-0349673-S (Sup. Court, J.D. Hartford/New Britain at Hartford, July 6, 1989

A. Paragraphs 1, 2, 5, 8

In paragraphs 1, 5, and 8 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos contractor license number 000107. In paragraphs 2, 5, and 8 of the Charges, the Department alleges that in the summer of 2000, respondent performed the project at the property. Respondent admits these allegations. FF 1, 2. The Department, therefore, sustained its burden of proving these allegations.

B. Paragraphs 3a and 6a

In paragraphs 3a and 6a of the Charges, the Department alleges that on July 11 and July 12, 2000, respondent failed to clean up the work areas in Building ##2 and 6, respectively, until no visible residue was observed, in violation of §19a-332-5(g) of the Regulations. The evidence establishes that on July 11and July 12, 2000, visible residue[9] was present at several locations throughout the work areas of Building ##2 and 6. FF 5, 7. Respondent does not dispute the presence of visual residue at those locations but, instead, asserts that no regulatory violation could have occurred because it voluntarily removed the visible residue before the deadline for completion of the project set forth in its contract with the property's owner. FF 15. For the reasons discussed below, this defense is without merit.

Respondent misapprehends the nature of the violation at issue. The subject regulation, §19a-332-5(g), requires an asbestos abatement contractor to clean a work area until "no visible residue is observed . . . ." In the current case, respondent cleaned the relevant work areas in Building ##2 and 6 to the point where it believed no visible residue was present, and then called in an independent project monitor to perform a visual inspection of both buildings and air sampling in Building #2. At some time between July 5, 2000, when the project monitor performed his visual inspections in the two buildings and took his air samples from Building #2,

[9] "'Visible residue' means any debris or dust on surfaces in areas within the enclosed work area where asbestos abatement has taken place and which is visible to the unaided eye. All visible residue is assumed to contain asbestos." *See*, §19a-332a01(hh) of the Regulations.

and July 11 and 12, 2000, when the Department inspected those building, respondent removed the critical barriers it had erected in Building #2 and removed its decontamination and HEPA filtration equipment from the relevant areas of both buildings. FF 3. At that point, respondent obviously considered its abatement work in those two buildings to be complete.

If the Department had not inspected the site and directed respondent to clean those two buildings again, respondent would have performed no further asbestos abatement in those areas. Respondent, therefore, failed to clean the two buildings at issue sufficiently to comply with the regulatory requirement that no visible residue be observable in those locations as alleged in these paragraphs. The final date for completion of an asbestos abatement project set forth in the contract between the contractor and the property owner is merely a private agreement between two parties and has no regulatory significance in this regard.

Similarly, the fact that respondent voluntarily complied with the Department's request to re-clean the areas at issue, while it may be considered in fashioning a remedy for these violations, does not disprove the existence of the underlying violations. The Department, therefore, sustained its burden of proving these allegations.

C. Paragraphs 3b and 6b

In paragraphs 3b and 6b of the Charges, the Department alleges that on July 11 and July 12, 2000, respondent failed to properly seal Building #6, in violation of §19a-332a-5(c) of the Regulations. The evidence establishes that on July 11 and July 12, 2000, the polyethylene sheeting on several of the windows in Building #6 was partially or totally dislodged. The evidence further establishes that several of these windows were cracked and open to the outside, and that there was a hole in the ceiling that was not covered by polyethylene sheeting. FF 7. Respondent does not dispute this evidence but, instead, argues that it was not required to maintain its critical barriers in Building #6 once that building passed its visual inspection on July 5, 2000. The Department claims that respondent was required to maintain those critical barriers until Building #6 was either demolished or until it successfully passed its air sampling.

Section 19a-332a-5(c) provides, in pertinent part, that "[a]ll openings between the *work area* and *non-work-areas* including . . . windows . . . shall be sealed airtight with . . . polyethylene sheeting." Emphasis added. The term "work area," as used in the Regulations, refers to the "specific area or location where the actual asbestos abatement work *is* being performed . . . ." *See*, §19a-332a-1(ii) of the Regulations. Emphasis added. Since the definition

of "work area" is written in the present tense, a location is a "work area" only as long as "actual asbestos work is being performed." Once an asbestos abatement project is complete, the location of that project ceases to be a "work area" and, thus, no longer needs to be sealed airtight with polyethylene sheeting.

An asbestos abatement project is considered complete when a project monitor certifies that there is no visual residue in the work area and that air samples from the work area meet the standards set forth in § 19a-332a-12(b) of the Regulations. *See,* §20-440-3(b)(4) of the Regulations. In situations where an abated building is going to be demolished, the Department does not require air sampling to be performed. Tr. I, pp. 96, 172, 193. In those circumstances, however, an asbestos abatement project is still not complete, within the meaning of the Regulations, until successful air sampling is performed or the building is demolished. See, *Memorandum of Decision In re: Briteside, Inc.,* Petition No. 990927, pp. 13-14, (10/23/00). This policy helps ensure that other contractors or members of the general public do not enter such buildings until they are demolished, thus reducing the risk of asbestos exposure to such individuals.

An asbestos abatement contractor abating a building that is scheduled for demolition can either request that a project monitor conduct air sampling, and remove the critical barriers if those tests are successful, or he can eschew air sampling and maintain the critical barriers until the building is demolished. Tr. I, pp. 169, 193. In the present case, respondent did neither. The Department, therefore, sustained its burden of proving these allegations.

D. Paragraph 3c

In paragraph 3c of the Charges the Department alleges that on July 11, 2000, respondent failed to provide proper HEPA filtration in Building #6, in violation of §19a-332a-5(h) of the Regulations. The evidence establishes that on July 11, 2000, there was no HEPA filtration in operation in Building #6. FF 6. The Department concedes that an asbestos abatement contractor is not required to maintain HEPA filtration once an asbestos abatement project passes its visual inspection. Tr. I, pp. 208-209. Building #6 passed its visual inspection on July 5, 2000. Respondent, therefore, was not required to maintain HEPA filtration in that building after that date.

The Department's argument that respondent was required to continue to maintain HEPA filtration in Building #6 after its successful visual inspection appears to be premised on the fact

that Building #6 should not have passed that inspection because visible residue was still present at that location. However, the presence of visible residue in Building #6 after the date of the visual inspection constituted a separate and distinct violation of the Regulations, *see* discussion of paragraph 6a of the Charges above, it did not extend the time period for maintaining critical barrier beyond that required by §191-332-5(h) the Regulations.

Unlike the situation discussed above regarding the maintenance of critical barriers in buildings scheduled for demolition, the Department offered no policy justification for requiring asbestos contractors to maintain HEPA filtration in such building *after* they have passed their visual inspection. The Department, therefore, failed to sustain its burden of proving this allegation.

E. Paragraph 6c

In paragraph 6c of the Charges, the Department alleges that on July 12, 2000, respondent failed to remove all moveable objects from Building #6, failed to clean all moveable objects to be salvaged or reused, and/or failed to dispose of all moveable objects that could not be salvaged or reused as asbestos waste, in violation of §19a-332a-5(d) of the Regulations. Respondent admits this violation. H.O. Exh 3.;Tr. I, p. 19. The Department, therefore, sustained its burden of proving this allegation.

F. Paragraph 9

In paragraph 9 of the Charges, the Department alleges that on August 3, 2000, respondent failed to label all containers holding asbestos waste at the property, in violation of §19a-332a-5(k) of the Regulations. The evidence establishes that on July 12, 2000, a trailer outside of Building #2 was about 75% full of bags of ACM. The evidence further establishes that the labels on several of those bags did not contain information concerning the point of origin or point of destination of that asbestos waste as required by the Regulations. FF 11. *See*, §19a-332a-5(k) of the Regulations. Both parties agree that the standard practice in the industry is to label all bags containing ACM before placing them in a trailer for removal from a worksite. Tr. I, p. 102; Tr. II, pp. 59, 126. Respondent obviously failed to do so.

Respondent claims that it stored the bags in the trailer because it ran out of labels and the trailer was the safest and most secure area in which to store those bags. Tr. II, p. 83. This explanation is simply not credible and appears to be an after-the-fact rationalization for respondent's failure to properly label the bags of ACM.

Respondent may, indeed, have run out of labels, and the trailer may, indeed, have been the best place to store the bags of ACM. However, it is unlikely that respondent would have gone to the trouble of loading the unlabelled bags into the trailer if it really intended to label those bags prior to removing them from the site. It is just not believable that respondent would have gone to all of the effort of loading the unlabelled bags onto the trailer, unloading them, labeling them, and then reloading them into the trailer once again, when it simply could have stored the bags at the location (or locations) where the ACM in those bags was originally generated until it secured additional labels. The more likely scenario is that respondent simply ran out of labels and thought it could get away with shipping the bags of ACM off site unlabelled until it was caught by the Department's investigator. It is also noted that running out of labels is no excuse for failing to label all bags of asbestos waste as required by the Regulations.

Respondent also claims that since the applicable regulation, *i.e.* §19a-332a-5(k), is silent as to when bags containing ACM have to be labeled, the Department failed to meet its burden of establishing this violation. However, if respondent's position were to be accepted, the Department would be unable to establish a violation of §19a-332a-(k) of the Regulations unless it intercepted a truckload of improperly labeled bags of ACM after it left a work site and before it arrived at its final destination. Such a result would place an unacceptable and unrealistic burden on the Department and would not further its responsibility to protect the public from exposure to asbestos waste.

The undisputed evidence establishes that a significant number of unlabelled bags of ACM were loaded in a trailer on the site contrary to established industry practice. The evidence further establishes that respondent failed to provide the Department with the opportunity to re-inspect those bags prior to their removal from the site despite the Department's specific request that it be allowed to do so. The Department, therefore, sustained its burden of proving this allegation.

G. Penalty

The Department requests that, pursuant to *Conn. Gen. Stat.* §19a-17 and §20-440-6(b) of the Regulations, respondent be reprimanded and assessed a civil penalty of $4,000. Respondent requests that it be assessed a civil penalty of at most $250. H.O. Exh. 8. For the reasons discussed in greater detail below, the remedy requested by the Department is fully supported by the record.

The purpose of the asbestos abatement regulations is to protect the public health by eliminating or reducing, as much as reasonably possible, the release of asbestos into the atmosphere before, during, and after an asbestos abatement project. To accomplish this goal, one of the primary responsibilities of an asbestos abatement contractor is to remove as much asbestos from the relevant work areas as possible. This requirement is codified in the provisions of §19a-332a-5(g) of the Regulations, which requires that a work area be cleaned "until no visible residue is observed in the work area." When a contractor fails to meet this requirement, it exposes its own workers and others to a serious health risk. FF 13, 14.

In the current case, respondent failed to properly clean three separate work areas, in two different buildings, as required by §19a-332a-5(g) of the Regulations. In addition, it failed to remove all removable objects from one work area, and to properly label bags of asbestos containing material before removing them from the site, as required by §§19a-332a-5(d) and 19a-332a-5(k) of the Regulations, respectively. Accordingly, it is appropriate that respondent's license be disciplined.

a. Civil Penalty

Section 19a-17(a)(6) of the General Statutes authorizes the Department to award a civil penalty of $10,000 for each violation. As concluded above, respondent committed at least four separate violations at two separate locations, including failing to properly clean three separate work areas. Respondent could be assessed up to $40,000 in civil penalties for these violations. It is noted that respondent voluntarily reopened the work areas in both buildings to remove the visual residue observed by the Department and had those areas successfully re-inspected by a different project monitor. FF 15. However, in view of the severity of respondent's violations, the risk to public health those violations posed, and the potential civil penalty that respondent could have been assessed, the $4,000 civil penalty requested by the Department is entirely appropriate.

b. Reprimand

Section 19a-17(a)(4) of the General Statutes authorizes the Department to reprimand an asbestos contractor's license for a violation of the asbestos abatement regulations. The violations established in this case justify issuance of such a reprimand.

Order

Based on the record in this case, the above Findings of Fact and Conclusions of Law, and pursuant to *Conn. Gen. Stat.* § §19a-17(a) and 20-440, and §20-440-6(b) of the Regulations, the following Order is hereby issued concerning the asbestos contractor license of P & T Asbestos Contractors number 000107:

1. Respondent shall pay a civil penalty of $4,000 by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on its face, and shall be payable within thirty days of the effective date of this decision.

2. Respondent's asbestos contractor's license number 000107 is hereby reprimanded.

3. The civil penalty shall be sent to:

Ronald Skomro
State of Connecticut Department of Public Health
450 Capitol Avenue, MS #51AIR
P.O. Box 34038
Hartford, Connecticut 06134-0308

4. This Order shall be effective thirty days from the date of its issuance.

D. H. Le

Donald H. Levenson, Esq.
Hearing Officer

10-31-02

Date